IN THE HIGH COURT OF KERALA AT ERNAKULAM

PRESENT :

THE HONOURABLE MR. JUSTICE THOTTATHIL B.RADHAKRISHNAN

WEDNESDAY, THE 17TH OCTOBER 2007 / 25TH ASWINA 1929

WP(C).No. 22806 of 2006(M)

PETITIONER:

M/S.L.F.HOSPITAL, ANGAMALI,
ERNAKULAM, REPRESENTED BY ITS DIRECTOR.

BY ADV. SRI.J.JULIAN XAVIER,
ADV. SRI.FIROZ K.ROBIN.

RESPONDENTS:

1. **KERALA STATE ELECTRICITY BOARD,**
   REPRESENTED BY ITS SECRETARY, VYDYUTHI BHAVAN,
   PATTOM, THIRUVANANTHAPURAM.

2. **THE DEPUTY CHIEF ENGINEER,**
   APTS (HQ), KERALA STATE ELECTRICITY BOARD,
   VIGILANCE WING, PATTOM, THIRUVANANTHAPURAM.

3. **THE SPECIAL OFFICER (REVENUE),**
   KERALA STATE ELECTRICITY BOARD,
   PATTOM, THIRUVANANTHAPURAM.

4. **THE ASSISTANT EXECUTIVE ENGINEER,**
   ELECTRICAL MAJOR SECTION, ANGAMALI.

BY ADV.SRI.C.K.KARUNAKARAN, SC FOR KSEB.

THIS WRIT PETITION (CIVIL) HAVING BEEN FINALLY HEARD ON 17/10/2007, THE COURT ON THE SAME DAY DELIVERED THE FOLLOWING:

W.P.(C). NO.22806/2006:

APPENDIX

PETITIONER'S EXHIBITS:

EXT.P.1: COPIES OF THE MONTHLY BILLS FOR THE MONTHS OF MARCH 2005, FEB.2005 AND JAN. 2005.

EXT.P.2: COPY OF THE APPLICATION DTD. 04/10/2004 FILED BY THE PETITIONER BEFORE THE R.4.

EXT.P.2.A: COPY OF THE RECEIPT DTD. 07/10/2004.

EXT.P.3: COPY OF THE MAHAZAR PREPARED THE ASST. ENGINEER, APTS, KALPETTA.

EXT.P.4: COPY OF THE BILL DTD. 12/04/2005.

EXT.P.5: COPY OF THE LETTER ISSUED BY THE KERALA ELECTRICAL AND ALLIED ENGINEERING COMPANY LTD., TO THE PETITIONER.

EXT.P.6: COPY OF THE ORDER DTD. 12/08/2003 ISSUED BY THE KERALA STATE ELECTRICITY REGULATORY COMMISSION.

EXT.P.7: COPY OF THE APPEAL DTD. 22/04/2005.

EXT.P.8: COPY OF THE JUDGMENT DTD. 18/05/2005 IN W.P.(C). NO. 13473/2005.

EXT.P.9: COPY OF THE ORDER DTD. 28/07/2006 IS ISSUED BY THE R.2.

EXT.P.10: COPY OF THE DEMAND DTD. 08/08/2006.

RESPONDENT'S EXHIBITS: NIL.

//TRUE COPY//

prv.

THOTTATHIL B. RADHAKRISHNAN, J.

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WP(C).No.22806 of 2006-M

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Dated this the 17th day of October, 2007.

JUDGMENT

1. The petitioner, a hospital had agreed with the KSE Board for a contract demand of 250 KVA. A transformer having a capacity of 406 KVA is stated to be installed and connection charges for 406 KVA were also remitted. According to the petitioner, it had applied for additional power allocation in excess of the available, since the recorded maximum demand exceeded the contract demand and because, there was continued demand for penalty in terms of the agreement.

2. According to the petitioner, while such application for additional power allocation was pending consideration,

APTS visited the premises leading to an order under Section 126 of the Electricity Act, 2003 making impositions and demands on the basis of alleged unauthorized load of 344 KVA. The petitioner relies on a decision rendered by the Kerala State Electricity Regulatory Commission on 12-8-2003 in the case of Amritha Institute of Medical Sciences and Research Centre (AIMS) (Ext.P6) and contends that the question whether there could be a demand in excess of the capacity of the transfer, is concluded against the Board by that ruling of the Regulatory Commission and therefore, the impugned orders are not sustainable. Certain other issues are also raised, including as to whether the APTS proceedings pending the application of the petitioner for allocation of additional power were sustainable in law.

3. The learned standing counsel for the Electricity Board states that Ext.P6 decision of the Regulatory Commission does not apply in as much as that was rendered under the law that governed the situation in that case while the case

in hand is governed by the laws now in force. It is also to be noticed that the factual situations on the basis of which Ext.P6 was rendered by the Regulatory Commission are not totally the same as the factual disputes arising for decision herein.

4. Having regard to what is aforesaid, it can be easily noticed that the controversy is not as to extraction of energy by theft as is ordinarily understood but the statutory content of the relevant provisions in the backdrop of the application of the petitioner for allocation of additional power, which was pending, needs to be considered. It also needs to be considered whether the capacity of the transformer of the petitioner has any impact on deciding the amount that could be levied in terms of the law applicable to the petitioner.

5. The aforesaid are matters which could be better determined by the Regulatory Commission which has the

technical expertise and sufficient legal equipment in the context of the laws in question.

6. Under the aforesaid circumstances, this writ petition is disposed of relegating the petitioner and the licensee, the KSE Board to the Kerala State Electricity Regulatory Commission for determination of the issues as already noticed above, which proceedings shall commence by the petitioner making an appropriate request in that regard along with a copy of this judgment. The Commission will make every endeavour to finalise the proceedings without delay. Following the interlocutory orders governing the parties in this case, status-quo as on today shall be maintained in relation to the enforcement of the impugned demand till a decision is rendered by the Regulatory Commission as directed above.

THOTTATHIL B. RADHAKRISHNAN,
JUDGE.

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